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November 2, 1993

Mr. R--- C. S---
S--- & A---
XXXX --- Court
---, CA XXXXX

Dear Mr. S---:

Re: SR -- XX-XXXXXX

This is in response to your letter dated August 19, 1993, in which you ask whether your enclosed brochure qualifies for a sales tax exemption. You state:

"S--- & A--- is a graphic design business. One of our customers has asked us to produce this brochure. Its principal purpose is the promotion of goods, services and advertising.

"After the brochure is printed, it is delivered directly to the golf course for distributing. It is free to both the golf course and the end user (the golfer)."

Retail sales of tangible personal property in California are subject to sales tax. When sales tax does not apply, use tax applies to the use of property purchased from a retailer for use in California. (Rev. & Tax. Code §§ 6051, 6201, 6204.) Therefore, unless the contrary is established, tax applies to the sales of the brochures. (Rev. & Tax. Code § 6091, Reg. 1667(a).)

You are correct that Revenue and Taxation Code section 6379.5 provides an exemption for certain sales of brochures, circulars, catalogs, and pamphlets consisting substantially of printed sales messages. If your brochure is a printed sales message, certain provisions must be satisfied in order for the printed sales message exemption to apply. Those requirements are explained in Regulation 1541.5(b) as follows:

"[T]ax does not apply to the sale of printed sales messages which are:

"(1) Printed to the special order of the purchaser;

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"(2) Mailed or delivered by the seller, the seller's agent or a mailing house acting as the agent for the purchaser, through the United States Postal Service or by common carrier;

"(3) Received by any other person at no cost to that person who becomes the owner of the printed material."

In order for the brochure to qualify as a printed sales message, it must be for the principal purpose of advertising or promoting goods or services. (Reg. 1541.5(a)(1).) In other words, more than 50 percent of the brochure must be for the purpose of advertising or promoting goods or services. The brochure you provided consists of 48 pages, which include the four page scorecard. Of those 48 pages, 24 consist of advertising and the remaining 24 pages are informational. Since the brochure does not consist of over 50 percent advertising, it is our opinion the brochure is not for the principal purpose of advertising and therefore does not qualify as a printed sales message within the meaning of subdivision (a)(1) of Regulation 1541.5. Since the brochure is not a printed sales message, the exemption provided by Section 6379.5 does not apply.

If we can answer any further questions, please feel free to contact us.

Sincerely,

Rachel M. Aragon
Staff Counsel

RMA:jlh

bc: --- - District Administrator (--)